

**16-10**  
**EXHIBIT D**  
**DEVELOPMENT FEE ORDINANCE**  
**BOROUGH OF MERCHANTVILLE**

MERCHANTVILLE BOROUGH  
ORDINANCE NO.16-10

AN ORDINANCE ADDING a new Chapter, Chapter 3, entitled  
"Affordable Housing" regarding the collection of residential and non-  
residential development fees.

**WHEREAS**, in Holmdel Builders Association v. Holmdel Township, 121 N.J. 550 (1990), the New Jersey Supreme Court determined that mandatory development fees are authorized by the Fair Housing Act of 1985, N.J.S.A. 52:27d-301 et seq., and the State Constitution, subject to the Council on Affordable Housing's (COAH's) adoption of rules;

**WHEREAS**, the State Legislature enacted the Statewide Non-Residential Development Fee Act (C: 40:55D-8.1 through 8.7) that imposes development fees on all construction resulting in non-residential development;

**WHEREAS**, pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), municipalities that are under the jurisdiction of the Council of Affordable Housing or a court of competent jurisdiction, and have an approved spending plan, may retain development fees.

**WHEREAS**, this ordinance is intended to establish standards for the collection, maintenance, and expenditure of development fees for the sole purpose of providing low and moderate income housing, and to authorize the creation of an Affordable Housing Trust Fund.

**NOW THEREFORE BE IT ORDAINED** by the Borough of Merchantville:

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**Article I.      Amendment to the Code of Ordinances.**

The Code of Ordinances is amended to add Chapter 3, Affordable Housing, as follows:

Chapter 3.      Affordable Housing

- A.      Purpose.      This Chapter establishes standards for the collection, maintenance, and expenditure of development fees for the sole purpose of providing low and moderate income housing. It also authorizes the creation of an Affordable Housing Trust Fund.
- B.      Residential Development Fees.
  - 1.      Imposed Fees.
    - a.      Residential Dwelling Units.      In all zoning districts, all new residential dwelling units shall pay a development fee of 1.5% of the equalized assessed value of any new residential development, provided no increased residential density is approved.

- b. Increased Dwelling Unit Density. When an increase in residential density is approved pursuant to N.J.S.A. 40:55D-70d(5), developers shall be required to pay a development fee of 6% of the equalized assessed value for each additional unit that may be realized. However, if the zoning on a site has changed during the two-year period preceding the filing of such a variance application, the base density for the purposes of calculating the bonus development fee shall be the highest density permitted by right during the two-year period preceding the filing of the variance application.

2. Exemptions and Waivers

- a. Affordable Units. Affordable housing developments, developments where the developer is providing for the construction of affordable units elsewhere in the municipality, and developments where the developer has made a payment in lieu of on-site construction of affordable units shall be exempt from development fees.
- b. Grandfather Clause. Developments that have received preliminary or final site plan approval prior to the adoption of the municipal development fee ordinance shall be exempt from development fees, unless the developer seeks a substantial change in the approval. Where a site plan approval does not apply, a zoning and/or building permit shall be synonymous with preliminary or final site plan approval for this purpose. The fee percentage shall be vested on the date that the building permit is issued.
- c. Demolition and Reconstruction. Residential structures demolished and replaced shall be exempt from paying a development fee.
- d. Additions and Alternations. Additions and alterations to existing residential dwelling units shall be exempt from the development fee, unless the construction results in a net gain in the number of residential dwelling units. In the event the addition or alteration results in a net gain in the number of residential dwelling units, the development fee shall be based on the increase in the equalized assessed value of the improved structure.
- e. Redevelopment Areas. Borough Council may waive all or a portion of the residential development fee for new residential development if: 1) the project is located in a designated Area in Need of Redevelopment, 2) the Applicant can demonstrate that the project will be financially infeasible if it is required to pay residential development fees, and 3) the proposed development is consistent with the adopted Redevelopment Plan.

C. Non-Residential Development Fees.

- 1. Purpose. This section is intended to be consistent with the Statewide nonresidential development fees, as amended, as set forth in (C.40:55D-8.1 – 8.7).
- 2. Imposed Fees.

- a. New Construction. In all zoning districts, new non-residential development shall pay a fee equal to two and one-half (2.5) percent of the equalized assessed value of the land and improvements for all new non-residential construction on an unimproved lot or lots.
  - b. Expansion. Non-residential development expansion shall pay a fee equal to two and one-half (2.5) percent of the increase in equalized assessed value resulting from any additions to existing structures.
  - c. Demolition and Reconstruction. Non-residential development fees shall also be imposed and collected when an existing structure is demolished and replaced. The development fee of two and a half percent (2.5%) shall be calculated on the difference between the equalized assessed value of the pre-existing land and improvement and the equalized assessed value of the newly improved structure, i.e. land and improvement, at the time final certificate of occupancy is issued. If the calculation required under this section results in a negative number, the non-residential development fee shall be zero.
  - d. Mixed-Use Buildings. The non-residential portion of a mixed-use inclusionary or market rate development shall be subject to the two and a half (2.5) percent development fee, unless otherwise exempted.
3. Exemptions
- a. Alterations. Change in Use. The 2.5 percent fee shall not apply to an increase in equalized assessed value resulting from alterations, renovations, repairs, and changes in use within existing footprint.
  - b. Houses of Worship and Educational Uses. All non-residential construction of buildings or structures on property used by churches, synagogues, mosques, and other houses of worship, and property used for educational purposes, which is tax exemption shall be exempt from the imposition of a non-residential development fee, subject to the requirements of 40:55D-8.4.
  - c. Parking lots and parking structures. Parking lots and parking structures, regardless of whether it is constructed in conjunction with a non-residential development, such as an office building, or whether it is developed as an independent non-residential development.
  - d. Public Amenities. Any non-residential development which is an amenity to be made available to the public, including, but not limited to recreational facilities, community centers, and senior centers, which are developed in conjunction with, or funded by a non-residential developer
  - e. Non-profit hospital or a nursing home facility. Non-residential constructing resulting from a relocation of, or an on-site improvement to, a nonprofit hospital or nursing home facility.
4. Inconsistency. To the extent that this Chapter may be inconsistent with any provisions of the Statewide Nonresidential Development Fee Act (C. 40:55D-8.1-8.7), this chapter is superseded to the extent of such inconsistencies.

- D. Fee Assessment. The construction official responsible for the issuance of a building permit shall notify the local tax assessor of the issuance of the first building permit for a development which may be subject to an affordable housing development fee. Within 90 days of receipt of that notice, the municipal tax assessor, based on the plans filed, shall provide an estimate of the equalized assessed value of the development. The construction official responsible for the issuance of a final certificate of occupancy shall notify the local tax assessor of any and all requests for the scheduling of a final inspection on property which may be subject to a non-residential development fee. Within 10 business days of a request for the scheduling of a final inspection, the municipal assessor shall confirm or modify the previously estimated equalized assessed value of the improvements, calculate the development fee, and thereafter notify the developer of the amount of the development fee. Should the municipality fail to determine or notify the developer of the amount of the development fee within 10 business days of the request for final inspection, the developer may estimate the amount due and pay that estimated amount consistent with the dispute process set forth below in section E.
- E. Appeal of Fee Assessment.
1. Residential Development Fees. A developer may challenge residential development fees imposed by filing a challenge with the County Board of Taxation. Pending a review and determination by the Board, collected fees shall be placed in an interest bearing escrow account by the Borough of Merchantville. Appeals from a determination of the Board may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
  2. Non-residential Development Fees. A developer may challenge non-residential development fees imposed by filing a challenge with the Director of the Division of Taxation. Pending a review and determination by the Director, which shall be made within 45 days of receipt of the challenge, collected fees shall be placed in an interest bearing escrow account by Borough of Merchantville. Appeals from a determination of the Director may be made to the tax court in accordance with the provisions of the State Tax Uniform Procedure Law, R.S.54:48-1 et seq., within 90 days after the date of such determination. Interest earned on amounts escrowed shall be credited to the prevailing party.
- F. Collection of Fees. The development fee shall be paid directly to the municipality prior to the issuance of a certificate of occupancy for such development. A final certificate of occupancy shall not be issued for any residential or non-residential development subject to this chapter until such time as the fee imposed has been paid by the developer. A developer may deposit with the appropriate entity the development fees as calculated by the municipality under protest and the local code enforcement official shall issue the certificate of occupancy provided that the construction is otherwise eligible for a certificate of occupancy. All fees must be deposited in a separate interest-bearing account for the purposes of affordable housing, known as the Borough's Affordable Housing Trust Fund.
- G. Affordable Housing Trust Fund. There is hereby created a separate, interest-bearing housing trust fund to be maintained by the Chief Financial Officer for the purpose of depositing development fees collected from residential and non-residential developers and other activities that generate affordable housing funds, including, but not limited to:

proceeds from the sale of affordable units, rental income from municipally operated units, repayments from affordable housing program loans, recapture funds, and any other funds collected in connection with the Borough of Merchantville's affordable housing program. All interest accrued in the housing trust fund shall only be used on eligible affordable housing activities.

- H. Expenditure of Affordable Housing Trust Funds. Release of the funds requires the adoption of a Council resolution in accordance with the Borough's adopted Spending Plan. Once a request is approved, the municipal chief financial officer releases the revenues from the trust fund for the specific use, as per the governing body's resolution. Funds shall not be expended to reimburse the Borough for past housing activities.

**Article II. Inconsistency with Ordinances.** All ordinances or parts of ordinances inconsistent herewith are hereby repealed to the extent of such inconsistencies and should any section, clause, sentence, phrase or provision of any item in this ordinance be declared unconstitutional or invalid by a Court of competent jurisdiction, such decision shall not affect the remaining portions of this Ordinance.

**Article III. Codification.** If codification reveals there is a conflict between the chapter and section numbers and/or letters and the existing code, the Borough Clerk is authorized to administratively change any chapter or section numbers and/or letters in order to eliminate confusion. No substantive changes may be made.

**Article III. Public Inspection.** A copy of this Ordinance shall be available for public inspection at the office of the Township Clerk during regular business hours.

**Article IV. Effective Date.** This Ordinance shall take effect upon final passage and publication in accordance with the laws of the State of New Jersey and upon the filing of same with the Burlington County Planning Board as required by N.J.S.A. 40:55D-16.

FIRST READING:  
PUBLICATION:  
PASSAGE:

**EXHIBIT E**  
**SPENDING PLAN**  
**MERCHANTVILLE BOROUGH, CAMDEN COUNTY**

**I. PURPOSE**

Pursuant to P.L.2008, c.46 section 8 (C. 52:27D-329.2) and the Statewide Non-Residential Development Fee Act (C. 40:55D-8.1 through 8.7), municipalities that are under the jurisdiction of the Council of Affordable Housing or a court of competent jurisdiction with an approved spending plan may retain development fees collected from residential and non-residential development for use in the municipality to address affordable housing needs. Merchantville Borough has, or will have an adopted development fee ordinance. This spending plan is intended to project the amount of development fees, based on anticipated development in the Borough and to describe the anticipated use of all development fees.

**II. COLLECTIONS TO DATE**

To date, Merchantville has collected and retained \$0 in development fees.

**III. PROJECTIONS OF REVENUES**

Merchantville anticipates collecting \$75,000 under the Statewide Non-Residential Development Fee Act during the certification period.

**IV. HOUSING TRUST FUND**

All development fees collected and generated by the fees are deposited in a separate interest-bearing bank account for the purposes of affordable housing.

**V. DISTRIBUTION OF DEVELOPMENT FEE REVENUES**

The use and release of funds shall require Borough Council to adopt a resolution for the expenditure of development fee revenues in accordance with this approved spending plan. Once a resolution is adopted, the Municipal Chief Financial Officer will release the revenues from the trust fund for the specific use as per Borough Council's resolution.

**VI. DESCRIPTION OF ANTICIPATED USE OF DEVELOPMENT FEES**

1. Merchantville will dedicate 20% of development fees collected each year to be used for administrative purposes such as salaries and benefits for municipal employees or consultant fees necessary to develop or implement municipal housing programs, including rehabilitation, new construction, housing elements and fair share plans, income qualify households, affirmative marketing programs, monitoring of implementation, and similar purposes.

2. Merchantville will devote 80% of development fees collected each year to render units more affordable, such as affordability assistance such as down payment assistance, rental assistance, closing cost assistance, market to affordable program, and similar purposes.

## **VII. ADDITIONAL SOURCES OF FUNDS**

Merchantville will be pursuing County HOME funds and other community development and affordable housing grant funds for its affordable housing program. Additionally, Merchantville may utilize a Payment in Lieu of Taxes (PILOT) program in Redevelopment Areas to subsidize the affordability of housing units that are sold or rented to low and moderate income households in satisfaction of the Borough's affordable housing obligation, through a written agreement with the property owner.

## **VIII. SCHEDULE OF HOUSING IMPLEMENTATION**

TASKS	HOUSING IMPLEMENTATION SCHEDULE								
	2017	2018	2019	2020	2021	2022	2023	2024	2025
Place 3 units in service. Approx. \$85,000									
Place 2 units in service. Approx. \$50,000									

## **IX. SUMMARY**

Merchantville intends to spend development fees revenues on its housing programs as outlined in the Settlement Agreement between the Borough of Merchantville and Fair Share Housing Center, dated \_\_\_\_\_. Merchantville has collected \$0 to date and anticipates an additional \$75,000 in development fee revenues before the expiration of substantive certification for a total of \$75,000. The municipality will dedicate 20% to administrative costs, and 80% towards making housing units affordable. Any shortfall of funds will be offset by grants and/or a PILOT program with property owners or redevelopers in a redevelopment area.

**THE BOROUGH OF MERCHANTVILLE**

**BY:** \_\_\_\_\_

**EDWARD F. BRENNAN, MAYOR**

**ATTEST:**

\_\_\_\_\_  
**DENISE BROUSE, BOROUGH CLERK**

The foregoing Ordinance was introduced by Mayor and Council at the regular meeting held on July 11, 2016. This Ordinance will be considered for adoption on final reading and public hearing to be held on August 8, 2016 at 7:30 p.m. in the Council Meeting Room, Merchantville Borough Hall, 1 West Maple Avenue, Merchantville, New Jersey.

The purpose of this Ordinance is to add Chapter 3 to the Merchantville code entitled, Affordable Housing regarding collection of residential and non-residential development fees in the Borough of Merchantville. A copy of this Ordinance is available at no charge to the general public between the hours of 8:30 AM to 4:30 PM, Monday through Friday (Legal Holidays excluded), at the Office of the Borough Clerk, Merchantville Borough Hall, 1 West Maple Avenue, Merchantville, New Jersey.